This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

MINUTE,

AND

DRAFT OF REGULATION,

ON THE

RIGHTS OF RYOTS IN BENGAL.

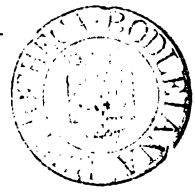
BY THE

HONORABLE J. H. HARINGTON, ESQ.

ORDERED TO BE PRINTED AND CIRCULATED

BY

HIS EXCELLENCY THE RIGHT HONORABLE THE VICE PRESIDENT IN COUNCIL.



CALCUTTA.

1827.

(1930.)

226. a. 269.

Digitized by Google

600018290Q

Digitized by Google

Digitized by Google

Digitized by Google

95 107

MINUTE,

AND

DRAFT OF REGULATION,

OF THE

RIGHTS OF RYOTS IN BENGAL.

BY THE

HONORABLE J. H. HARINGTON, ESQ.

1827.

Digitized by Google

Digitized by Google

EXTRACT from the PROCEEDINGS of the RIGHT HONORABLE the VICE-PRESIDENT in COUNCIL, in the TERRITORIAL DEPARTMENT, under date the 11th October, 1827.

Read again, the following Papers recorded on the Proceedings of the 8th March last; viz.

Extract from the Proceedings, in the Judicial Department, dated 5th February, 1827.

Letters to Boards of Revenue, in the Lower and Central Provinces, dated 8th March, 1827.

Read also, the following Papers:

Extract from the Proceedings in the Judicial Department, dated 22d March, 1827.

Letter from the Board of Revenue, in the Central Provinces, dated 11th May, 1827, with its enclosure.

Ditto from Secretary to ditto, dated 15th June, 1827, with its enclosure.

Ditto from Acting Secretary to the Board of Revenue, in the Lower Provinces, dated 1st June, 1827, with its several enclosures.

Mr. Harington's Minute, submitting a Revised Draft of "a Regulation for maintaining the rights of Khoodkasht, Chupperbund, and other resident Ryots, who, by prescriptive usage, are entitled, on certain conditions, to the permanent occupancy of the lands cultivated by them, within the limits of the villages in which they reside," with the Papers annexed.

Digitized by Google

RESOLUTION,

The Vice-President in Council having maturely considered the Minute and Draft of Regulation above recorded, finds difficulty in resolving on the immediate adoption of the measures recommended, entertaining doubts as to the necessity of some, and as to the expediency and justice of others, of the enactments contemplated. It is, however, of essential importance, that the facts and principles brought forward on this occasion, by Mr. Harington, should be widely disseminated amongst the Servants of Government attached to the Revenue and Judicial Departments, in order that the discussion of them may conduce to a proper understanding of the subject, and the application of right principles to all cases that may arise hereafter. With this view, it appears to His Lordship in Council to be advisable, that Mr. Harington's Minute, with the Draft annexed, should be printed and circulated to the Officers of both Departments, preliminarily to a final determination on the subject.

ORDERED, that four hundred copies of Mr. Harington's Minute, and of the Draft of Regulation proposed by him, be printed at the Government Press, and on the receipt of the Papers from the Press, that they be distributed to the Officers of the Judicial and Revenue Departments, in the Lower Provinces, with orders severally to state what construction they put on the existing Regulations, as they affect the rights of those occupants of the soil, whose interests Mr. Harington's Draft of a Regulation proposes to confirm and secure.

(A True Extract,)
H. T. PRINSEP,
Acting Secy. to the Govt.

Digitized by Google

MINUTE.

THE causes, which have principally operated in producing insecurity and oppression to the Peasantry of Bengal, and in a less degree to those of the other Provinces, under this Presidency, where the land revenue has been fixed in perpetuity, have been fully stated in the correspondence between the Honorable Court of Directors, and this Government. The following brief enumeration of them is, I believe, sufficiently accurate:—

1st. The omission of clear and definite Rules in the Regulations of 1793, and subsequent years, for declaring the rights and tenures of the Ryots, whose rents were, in many instances, left to be adjusted by Pergunnah or other supposed local rates, no longer in existence, or ascertainable.

2d. The prejudicial effects of some of the rules, which were established, with a view to prevent a reduction of the land rents; especially those which limited the duration of leases to ten years; and which cancelled all existing leases to under tenants, (with certain exceptions,) in the event of a public sale for arrears of revenue.

3rd. A want of due enforcement of the Rules, which were enacted on concluding a permanent settlement with the Zemindars and other Landholders, requiring them, within a fixed period, to adjust the rents of their tenants, and furnish them with Pottahs; the forms of which were to be approved by the Collectors.

4th. A misapprehension of the rights and privileges intended to be vested in the Landholders, who were recognized in the Regulations, as proprietors of the lands, comprised in their respective estates.

Digitized by Google

5th. Abuse of the powers granted to the Landholders and Farmers, with whom the permanent settlement was made, and their Agents, for recovering arrears of rent by distraint.

6th. The abolition of the Canoongo Office, in the Lower Provinces, by which measure the usual registry of lands, rents, leases and local customs, under the Native Government, was discontinued.

7th. The insufficiency of the established Courts of Judicature, to provide ready means of redress, when the numerous cultivators of the soil suffered injury and oppression, from undue enhancement and exaction of rent.

2. In revising the Draft of a Regulation proposed by me, for more fully declaring and securing the rights of the Khoodkhost Ryots, and other permanent under-tenants of land,—I purpose to offer a few observations on each of the points above noticed; but without any methodical arrangement in the discussion of them.

3. The omission of definite rules in the Regulations of 1793, for declaring and securing the rights and tenures of the Ryots, is to be accounted for by the extreme intricacy and difficulty of the subject, as candidly stated in the Minute of Mr. Shore, (now Lord Teignmouth,) dated 18th June, 1789, on the permanent settlement of Bengal. In that Minute he brought forward all the information which his experience and inquiries had enabled him to obtain relative to the tenures of the Ryots, and the principles on which the rents payable by them were usually adjusted in the Province of Bengal; and the annexed propositions deduced from the arguments contained in it, formed the basis of the Rules passed by Government in the same year, and in 1790 and 1791, which were subsequently re-enacted, with amendments, in Regulation VIII, 1793.

These propositions, as they respected the Ryots, were to the following effect:

Digitized by Google

"Whereas, from the ignorance, inattention, and oppression of the Zemindars, the greatest abuses have been practised in the collections, and the Ryots have been exposed to exactions, the following Rules are now prescribed to all Zemindars, Talookdars, and persons entrusted with the Revenues, for their immediate direction and guidance: That the Rents to be paid by the Ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount. If by a Pottah, containing the Assul and Abwab, the amount of both shall be inserted in it; and the Ryot shall not be bound to pay anything beyond the amount specified, on account of Khurcha, Selamy, or any other article. If by a Theeka Pottah, the whole amount payable by the Ryots is to be inserted in it. If by any rule or custom, such as the payments of the last and preceding year, the rate of the village, Pergunnah, or any other place, an account is to be drawn out, in the beginning of the year, shewing what the Ryots are to pay by such rule or rate, and a copy of it to be given to them. Where the rents are adjusted upon a measurement of the lands, after cultivation, the rate and terms of payment shall be expressed in the Pottah. If by any established and recorded Jummabundy, that is to be rule for demanding the rents. If the rents are paid in kind, the proportion which the Ryots is to pay shall be specified, either in an account, or written agreement. In every Mofussil Cutcherry, the Nirkbundy, or rates of land, shall be publicly recorded, and the Zemindar is answerable for enforcing this Regulation, under a penalty or fine for neglect, at the discretion of Government. For every village, a Putwarry shall be established by the Zemindar, for the purpose of recording the accounts of the Ryots in that village; and a list of such Putwarries shall be deposited in the Sudder Cutcherry of the Collectorship, and in the Cutcherry of the Pergunnah where the village is situated. No farmer shall be allowed to remove a Putwarry with-

Digitized by Google

out the permission of the Zemindar. If after the expiration of six months from the commencement of the year, upon a reference to the accounts of any village, for the purpose of deciding complaints, it should be found that no Putwarry has been established, the Zemindar shall be fined by the Collector for such neglect. Where no Nirkbundy of the land exists, the Zemindar shall be bound to form the same, either for his whole Zemindarry, or such parts thereof where it may be wanted, within a prescribed period, to be determined by the Collector. No Zemindar, farmer, or person, acting under their authority, shall be allowed to cancel the Pottahs of the Khoodkhost Ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them, during the last three years, have been reduced below the rates of the Nirkbundy of the Pergunnah; or that they have obtained collusive deductions; or upon a general measurement of the Pergunnah, for the purpose of equalizing and correcting the assessment. When the Jumma of a Ryot has been ascertained and settled, he shall be authorized to demand a Pottah from the Zemindar, or person acting under his authority, whether farmer, Gomashtah, or other; and any refusal to deliver the Pottah shall be punished by fine, proportioned to the expense and trouble of the Ryot, in obtaining it. The Zemindar is also required to cause a Pottah for the rent so adjusted to be prepared and tendered to the Ryot. It remains with the Zemindar to determine, by whom the Pottah shall be granted; whether by himself, farmer, Gomashtah, or whom. No under-renter, without special permission from the Zemindar, shall be empowered to grant Pottahs beyond the period of his lease; and no Agent to grant them without authority from the Zemindar or Talookdar, when in possession of the lands, or of the manager, when the Zemindar and Talookdar are excluded. All existing leases to under-renters and Ryots to remain in force to the period of their expiration, unless proved

Digitized by Google

to have been obtained by collusion, or from persons not authorized to grant the same. Every Collector, renter, or receiver of the rents, throughout every graduation, from the Zemindar to the Ryot, shall be compelled to give receipts for all sums received by them, and a receipt in full, on the complete discharge of every obligation: and any person complaining that a receipt has been refused him, upon establishing the charge, shall be entitled to double the amount paid by him, as damages from the person who received it. The receipts to the Ryots are to specify the quantity of ground for which he pays rent, and the denomination of it, as being Khoodkasht, Paekasht, or Comar, with the rent received on account of each sort of land severally. In case any Village, or district, should be affected by inundation or other calamity, causing the Ryots to desert, it shall not be lawful for any Zemindar, or renter, or collector of the rents, to demand the rents of the Ryots who are fled, from those which remain. The Zemindar shall not be authorized to impose any new Abwab or Muthote, on any pretence whatever, upon the Ryots; and every exaction of this nature to be punished by a penalty, equal to three times the amount imposed. If at any future period, it be discovered that new Abwab or Muthote have been imposed, the Zemindars shall be responsible for the penalty, during the whole period of such impositions."

"As the impositions upon the Ryots, from their number and uncertainty, have become intricate to adjust, and a source of oppression to the Ryots, the Zemindars shall be compelled to make a revision of the same, and to simplify them, by a gradual and progressive operation, as follows:—They shall begin with Pergunnahs where the impositions are most numerous, and having obtained an account of them, shall, in concert with the Ryots, consolidate the whole, as far as possible, into one specific sum; but so that, in no case, the sums demanded from the Ryots, shall exceed three articles, viz., Assul, Abwab,

Digitized by Google

and Khurcha. Having prepared this account, they shall submit it to the Collector for his inspection; after which it is to be enforced by the authority of Government, and any enhancement of the Abwab, or Khurcha, to be punished as an extortion. Where, by mutual consent of the Ryots and the Zemindars, the Abwab can be wholly reduced and consolidated, it shall be done accordingly; and the rates of the land, according to the nature of the soil and the produce, be the rule for fixing the rent. The rents of each Pergunnah in the Zemindarry to be annually adjusted in the same manner, until the whole be completed; and the exact proportion which the Abwab and Khurcha bear to the Assul Jumma, to be precisely determined. The Zemindar is to be positively enjoined to regulate a certain proportion of his Zemindarry annually, so that the whole be completely performed within (a certain number of) years from the date of his agreement."

"Every Zemindar and Talookdar to be also compelled to prepare the form of a Pottah or Pottahs adapted to the circumstances of his Zemindarry and Talookdarry; and to lay the same before the Collector; who, having approved the form, shall publish it, with a notification to the Ryots, that upon application such Pottahs will be given to them; and no Pottahs under any other form shall be permitted."

"No Zemindar shall be allowed to contract any engagements with any farmer, or authorize any act contrary to the letter and meaning of these Regulations."

"The rules ultimately entered in Regulation VIII. 1793, on the modified adoption of the foregoing propositions, are contained in Sections LIV. to LXV. of that Regulation, and need not be detailed in this place. One important modification was prescribed in Section LIV., which directs a consolidation of the whole of the demands upon the Ryots into one specific sum, instead of the option before proposed of three articles, viz., *Assul*,

Digitized by Google

Abwab, and *Khurcha*. The same Section fixed the end of the Bengal, Fussily and Villaity year 1198, as the period by which the required consolidation was to be completed; and before the expiration of which the landholders and farmers were also required, by another Section, to prepare and deliver Pottahs to the Ryots, under penalty of being non-suited, with costs, in the event of any claims being subsequently prepared by them, on engagements wherein the consolidation of Assul, Abwab, &c. should appear not to have been made. Had this rule been carried into effect, it is evident that the consolidated rents must have been adjusted, according to the rates extant in the Bengal and Fussily years 1197 and 1198, being the first two years of the permanent settlement; and the declared sentiments of both Lord Cornwallis * and Mr. Shore, against the right of the Zemindars, and other landholders, to impose an arbitrary increase of rent upon the Ryots, especially the Khoodkhost, or resident occupants of the land cultivated by them, warrant the strongest presumption that it was intended by the Government to establish for Bengal, Behar, and Orissa the rates of land rent, which actually subsisted in those years, under different forms and denomination, as a standard, [*Mutatis Mutandis*,] for future years; in like manner, as it was subsequently enacted for the Province of Benares, in Regulation II. 1795, that the *Nukdy*, or money rents of the Ryots should not, in future, exceed the consolidated amount of the *Assul* and *Abwab*, or original rent and additional cesses, which existed in the Fussily year 1187. But unfortunately, the Regulations for the Lower Provinces contained no specific enactment, or declaration, to this effect; and the restrictions prescribed in the Second Clause of Section LX. Regulation VIII. 1793, in behalf

* See His Lordship's Minute of 3rd February, 1790.

Digitized by Google

of the Khoodkasht Ryots of Bengal and Orissa,* were, I fear, but a weak and inadequate barrier against a frequent, if not general, enhancement of their rents, since it allowed their Pottahs to be cancelled not only in cases of collusion, but on proof that "the rents paid by them within the last three years, had been reduced below the rate of the Nirkbundy of the Pergunnah, or upon a general measurement of the Pergunnah, for the purpose of equalizing and correcting the Assessment."

6th. If, indeed, as assumed in the Regulations of 1793, and subsequent years, there had existed, in each Pergunnah, a table of established rates, by which the rents of the Ryots might be equitably adjusted and determined in cases of dispute between landlord and tenant, when previous leases had expired or were cancelled, the resident cultivators might have been preserved from any oppressive enhancement of their just rents. But it is to be regretted that the provision for a Mofussil Nirkbundy, which formed part of Mr. Shore's propositions above cited, were not included in the "amended rules for the decennial settlement," approved by the Governor General in Council on the 23d November 1791, nor in any part of Regulation VIII. 1793. In his Minute of 18th June 1789, Mr. Shore calculated "that the rents in Bengal might be collected according to ascertained rates throughout two-thirds of the country;" and added the following observations, which it may be useful to notice, as applicable to the Province of Bengal at the time when the permanent settlement was in agitation, but had not been concluded.

"Although much has been said with respect to the Ryots, I shall nevertheless enter into a more particular detail of what regards them. In every district throughout Bengal, where the licence of exaction has not super-

* This Clause was declared not applicable to Behar.

Digitized by Google

seded all rule, the rents of the land are regulated by known rates, called *Nirkh*, and in some districts each village has its own. These rates are formed with respect to the produce of the land, at so much per Beegah. Some soils produce two crops in a year of different species; some three. The more profitable articles, such as the mulberry plant, beetle leaf, tobacco, sugar-cane, and others, render the value of the land proportionally great. These rates must have been fixed upon a measurement of the land, and the settlement of Toorun Mul may have furnished the basis of them. In the course of time, cesses were superadded to that standard, and became included in a subsequent valuation, the rates varying with every succeeding measurement. At present there are many Abwabs, or cesses, collected distinct from the Nirkh, and not included in it, although they are levied in certain proportions to it. The following abstract of a Ryot's account, taken near eight years before this time, will show the mode in which this is done."

	RS.	AS.	GS.	CS.
Rent of seven Beegahs, twelve Cottahs, seven Chuttacks of land of various produce, calculated at a certain rate per Beega, according to its produce; (extracted from an account of demands and payments, called Hissab Khurcha.)	14	0	8	0

Abwab, or Cesses.

	RS.	AS.	GS.	CS.
Chout, at 3-16th per Rupee	2	10	0	0
Poolbundy, a half month's demand, or 24th of the Jumma - -	0	9	7	2
Nuzzerana, one month, or 12th - - -	1	2	15	0
Maungun, ditto ditto -	1	2	15	0
Foujdary, 3-4th of one month, or 1-16th -	0	14	15	0

Digitized by Google

	Rs.	As.	Gs.	Cs.	Rs.	As.	Gs.	Cs.
Company's Nuzzerana, one month and a quarter	1	7	0	0				
Batta, one anna per Rupee	0	14	0	0				
					8	12	2	2
Total - -					22	12	10	2
Khelat, at one Anna and a half per each Rupee, of the above sum - -					2	2	1	2
Total - -					24	14	12	0
" The first sum of Rupees					14	0	8	0

is called the original rate of the land; but even this may include cesses consolidated into it. Some of the *Abwab*, or cesses, since added, are subsequent to the period of the Dewanny. If the accounts of the same land were now examined, some additional impositions might appear. The Zemindars introduce them by degrees at intervals of two, three, four, or five years; and rarely attempt them for two or three years successively. Solicitation and influence are equally employed to effect the establishment of them; and a Ryot, where the burthen is not too heavy, will rather submit than resist or complain. Temporary extortion may be practised at any time, but a permanent exaction of this nature can rarely be established by force alone upon the Ryots. Theeka Pottahs generally express a fixed rate for the land, at so much per Beegah, without any other article, but the sum total includes the several existing cesses at the period of adjustment, and others are sometimes again added and consolidated. When the rents, by successive impositions, become too heavy, the Ryots either abscond, or the Zemindar allows them a compensation by giving them other land at a favourable rate; but seldom either by remitting the imposts, or diminishing the rates of the other lands. In some places, however, the accumulation

Digitized by Google

of Abwab has caused a proportionate diminution in the Assul; this is particularly the case in Dinagepore. When a measurement of the lands takes place, the existing rates are confirmed, and generally with some additions. Where none can be found, a reference is made to the rates of other lands of the same quality, in the vicinity of the spot measured; but the adjustment of them, in that case, is a business of considerable difficulty. Every part of the transaction is a subject of contention; the demands on both sides are unreasonable; and are finally terminated by a compromise. It is the business of the Putwarry to register these rates, which were also formerly recorded by the Mofussil Canoongoes; and these, when wanted, became open to the inspection of the Government. It would be impossible, I conceive, to fix specific rates for any one species of produce, in any district generally; the quality of the soil and the situation of the land, as enjoying the advantages of markets and water carriage, must determine it. The remark applies to every species of produce. Where the rates of land are specific and known, a Ryot has a considerable security against exaction, provided the Officer of Government attends to his complaints, and affords him redress; and without this he can have none. The additional security which he derives from a Pottah, supposing it to be properly drawn out, is this; that it specifies, without reference to any other account, the terms upon which he holds the land, and the amount of the Abwab, or cesses, which are not mentioned in the Nirkbundy, nor always in the Jummabundy. In those places where the accounts are kept with the most regularity, and the established rates adhered to, the annual adjustment of the rent to be paid by each Ryot, is not made without difficulty. The usual mode is to form a survey of the ground, and compare it with the accounts of the former year, in which every species of cultivation is specified, together with the relative situa-

Digitized by Google

tion of the land. Where the general appearance of the land corresponds with the detail of it in the accounts, the rent is adjusted without much difficulty; but where it differs, either by exhibiting a greater quantity of land in cultivation, or any article of a superior quality on the same land, the rents of such land are demanded, and a measurement is often adopted to determine them. The nature of the business shews, that it can only be effected by a person well versed in it. In the ordinations of the Emperors, the officers employed in the Collections are constantly encouraged, and required to preserve the more valuable species of produce. I suppose that the rents in Bengal may be collected, according to ascertained rates, throughout two-thirds of the country; and notwithstanding the various abuses which I have detailed, it is evident that some standard must exist; for without it, the revenues could never be collected from year to year, as they have been. Exactions on one side, are opposed by collusions on the other; but we may with certainty conclude, that the Ryots are as heavily assessed as ever they were. The land is divided into Ryotty and Komar. The rents of the former are paid in money, and of the latter in kind. The usual division is half to the Zemindar, and half to the Cultivator; but some part of the expenses generally falls upon the latter, in addition to the stipulated proportion. Pottahs to the *Khoodkhost* Ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period; and express, that they are to hold the lands, paying the rents from year to year. Hence the right of occupying originates; and it is equally understood as a prescriptive law, that the Ryots who hold by this tenure, cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy; which, however, is rarely insisted upon: the Zemindars demand

Digitized by Google

and exact the difference. I understand also, that this right of occupancy is admitted to extend even to the heirs of those who enjoy it. *Paekasht* Ryots, or those who cultivate the land of villages, where they do not reside, hold their lands upon a more indefinite tenure. The Pottahs to them are generally granted with a limitation in point of time; and where they deem the terms unfavorable, they repair to some other spot. Such are the general usages and practice, as far as I have been able to ascertain; but there are local customs, which can only be known by an examination on the spot. In some parts of the country, I understand that the Zemindar is, by prescription, precluded from measuring the lands of the Ryots, whilst they pay the rents according to the Pottah and Jummabundy."

7. After the lapse of nearly forty years, and the mutations of property and possession which have taken place in the landed tenures of Bengal during that period, it cannot be expected that any measures now practicable would be successful in ascertaining the actual rates of rent levied throughout the country at the commencement of the permanent settlement, or the consolidated rents, which should have formed the legal standard of assessment from that time, if the rules promulgated by Government in 1790 and 1791, and re-enacted in the Regulations of 1793, had been duly observed. I concur, however, with Mr. H. Colebrooke, (as stated in his Minute 1st May 1812,) that "if it be thought expedient in place of abrogating the laws, which were enacted for the protection of the tenantry, and specially of the Khoodkhost Ryots, or resident cultivator, that the right of occupancy, which those laws were intended to uphold, should be still maintained, and that the Ryot should be supported in his ancient and undoubted privilege of retaining the ground occupied by him, as long as he pays the rent justly demandable for it, measures should be adopted, late as it now is, to reduce to writing a clear

Digitized by Google

declaration and distinct record of the usages and rates, according to which the Ryots of each Pergunnah or district will be entitled to demand the renewal of their Pottahs, upon any occasion of a general or partial cancelling of leases." Mr. Colebrooke adds:—"I had it at one time under consideration to propose a plan for the preparation of such Records, under the superintendence of the Revenue Officers, assisted by the Canoongo Office, to be re-established for that and for other purposes; and in communication and concert with the Zemindars and principal Ryots of each Pergunnah: and I had made considerable progress towards maturing the plan of this great undertaking; but after much consultation with the late Acting President of the Board of Revenue, (Mr. Crisp,) and with other experienced and well-informed Officers of the Revenue Department, I have been diverted from this project by the apprehension that the intelligence and activity requisite for the due superintendence of its execution within each Zillah are not to be universally nor generally expected; and that, if it were ill performed, it might, not improbably, add to the subsisting evils, instead of remedying them." On these grounds, Mr. Colebrooke felt himself "compelled, however reluctantly, to relinquish the idea of restoring a definite and certain standard, to which appeal may be made for determining the rights of persons having dependent and subordinate tenures under Landholders in chief, and for settling the disputes and questions which arise between them;" and he substituted the provisions, which were stated in his Minute of the above date, and were afterwards enacted in Regulation V. 1812.

8. But in a subsequent Minute, (dated 13th June 1815,) after expressing his fear that the palliative remedy adopted in Regulation V. 1812, was "but an insufficient relief of a serious and inveterate evil, more especially as the remedy provided applies only to individual cases as they arise, and does not operate with much effect to ob-

Digitized by Google

viate the future recurrence of disputes between other individuals," Mr. Colebrooke avowed his disposition to recommend, "that measures should be taken for the re-establishment of fixed rates, as nearly conformable to the anciently established ones, as may be yet practicable, to regulate distinctly and definitely the relative rights of the landlord and the tenantry; and he accordingly proposed a revival of the Canoongo Office in the Lower Provinces, on a footing similar to what had been found useful in a reform of the institution for Benares and the Western Provinces; offering the following additional remarks in support of this proposition.

"The power of making laws for the protection and welfare of the tenants, in the several classes of dependant Talookdars, Ryots, and other cultivators of the soil, was expressly reserved to Government, by an Article of a Proclamation enacted into Regulation I. of 1793; and rules, with correspondent rates, may be sanctioned by Government, in prosecution of those measures and in virtue of that power, without any apprehension of violating faith, if they should differ in some degree from the ancient usage, under the difficulty which must now attend the research, and which will impede a perfectly exact ascertainment of it. Still, however, it is due to all parties interested, that the best practicable means should be used to make the ascertainment as perfect as it is capable of being rendered."

"But, if Government should be unwilling to interpose its legislative authority, for the purpose of furnishing clear and definite rules, by which the relative rights of Zemindar and Ryot may be determined, and which would close an abundant source of mutual grievance and injury, and consequent dispute and litigation, the next best measure is to do what is yet practicable towards collecting and preserving such evidence and information, as can be yet recovered, and placing it where persons

Digitized by Google

having an interest therein, may inform themselves concerning the existing evidence of their rights, and where Courts of Justice, when called upon to decide such questions, may find the information requisite to their investigation of the matter."

" In either view, or for either purpose, the re-establishment of the Canoongoe Sherishtah, or the institution of some analogous office of Registry and Record, appears highly expedient. It would materially assist the recent, as well as the earlier enactments of the Regulations, designed for the protection of the tenant: it would greatly assist the adjustment of numerous disputes of every sort between landlord and tenant, which actually arise; and would sensibly tend either to obviate their occurrence, or, at least, to accommodate them at an early moment, perhaps, without previous recourse of either party to a law suit. But, the most important of the objects, for which the re-establishment of the office is desirable, no doubt, is a retrieval of the knowledge of those rules and rates, by which all questions between Zemindar and tenant, are by Regulation to be determined, and without which the relative interests of these parties can no way be settled, unless Government, as before suggested, will enter upon the task of fixing them by fresh enactment of law."

" If it be, indeed, practicable to retrieve the requisite information by any means, it is most likely to be done through an office instituted on the basis of that, in which formerly it was expected to be recorded and preserved. Such of the records of the ancient Serishtah as yet exist, would, of course, be transferred to the revised office, and the fittest among the persons formerly employed in it, would naturally be engaged at the re-establishment of it. Their recollection, or the means of inquiry which they would possess, would be most promptly serviceable to the recovery of such written

Digitized by Google

records as yet remain, and to the collecting of information from various quarters, to supply the defect of the records that are imperfect, and the want of those which are lost."

"On this account, joined with the consideration of the general utility of the office in the affairs of the land revenue, as experienced in the Provinces, under the Board of Commissioners, it appears to be highly expedient that an office, on a footing similar to that of the reformed Canoongoe of Benares, and the Ceded and Conquered Provinces, should be established in Bengal, as has been already recommended by the Board for Behar, and as would have been, at the same time, recommended by us for the entire Province of Bengal, had not the Board been withheld by the apprehension, that the expense, (no fund being suggested to defray it,) might be an insuperable objection."

"The general functions of the office would be the same with those of the Ceded and Conquered Provinces, and the district of Benares. Their special duty, with reference to a principal object of the revived institution, would be to prepare a statement of the rates, or the *Rybundee Durbundee,* or by whatever other name known, for the Pergunnah, or other local division, as they stood in the Bengal year 1197, the first year of the permanent settlement, together with the *Abwab* established previously to that year, as well as the rules, by which those rents were regulated and applied; ascertaining them from the records and old accounts, which they may be able to collect, and from the best accessible sources of information, where records may be deficient."

"They should be further instructed to prepare statements of the actual rates, according to existing engagements, and present collections and payments between landlord and tenant. To enable them to execute this essential duty, the Putwarries should be required to furnish all necessary information, and to allow them to

Digitized by Google

inspect documents and accounts, for which they may have occasion, and supply them with copies of accounts and papers wanted for record."

9. The re-establishment of the Canoongoe Office, in the Lower Provinces, has not yet produced all the good effects anticipated by Mr. Colebrooke; and he has perhaps expected too much from it, in the Province where the agency of Canoongoes is no longer used by the Collectors for ascertaining the assets of the lands, with a view to regulate a variable assessment of the land Revenue. But the means of rendering the Office more efficient, are now under consideration, in pursuance of instructions from the Honorable Court of Directors: and, as observed by the Court, in their letter of 15th January 1819, "all inquiries into the state of landed tenures will be greatly facilitated by the re-organization of the offices of Canoongoe and Putwarry on their ancient footing."

10. It has further occurred to me, that a Zillah Canoongoe, or Serishtadar of the Canoongoe Dufter, (who should be selected with strict regard to his qualifications and character, and should be encouraged to discharge the duties of his office with zeal and fidelity, by the grant of a liberal salary,) to arrange and superintend the reports and documents of the Pergunnah Canoongoes and Village Putwarries, and assist the Collector in all investigations connected with the tenures and rents of land within his territorial jurisdiction, might be of the greatest use in promoting the important object of protecting the resident cultivators and other under-tenants of land, against future oppression; and securing them in the possession of such rights as are still left to them; or which can be maintained in their behalf, consistently with the declared rights of the Zemindars, Talookdars, and other acknowledged proprietors, to whom their rents are now, or may become payable under the permanent settlement.

11. If it be said, that the appoinment of Registrars,

Digitized by Google

and of Committees of Records, already authorized, has provided for the object of the arrangement above suggested, I must answer, that, as far as I am acquainted with the actual performance of duties, by the Officers referred to, (chiefly in the English department), they do not, in any degree, supersede the expediency of furnishing the Collectors with additional aid for enabling them to take an efficient part in accomplishing the just and benevolent purposes of the Honorable Court of Directors, as particularly stated in their Revenue General Letter, dated 15th January 1819 under the head of "Rights of the Peasantry."

12. In that Letter, (Paras. 29 and 30,) the Court observe, that "the paramount importance, on every ground of justice and expediency, as connected with the welfare and prosperity of the British Empire in India, of adopting all practicable means for ascertaining and protecting the rights of the Ryots, has, in our former correspondence, been made the topic of frequent and serious representation; nor can it be otherwise than most satisfactory to us to find that the attention of your Government, and those acting under its authority, in the internal administration of the country, are now so earnestly occupied in the furtherance of this most important and essential work. We fully subscribe to the truth of Mr. Sisson's declaration, that the faith of the state is, to the full as solemnly pledged to uphold the cultivator of the soil, in the unmolested enjoyment of his long-established right, as it is to maintain the Zemindar in the possession of his estate; or to abstain from increasing the public revenue permanently assessed upon him."

13. After adverting to Mr. Colebrooke's Minutes, which have been cited by me, the Court further observe; (in Paras. 70 and 71 :) "We are aware, with Mr. Colebrooke, of the difficulty that must now attend the perfect ascertainment of the rates of assessment, according to ancient usage, but we entirely agree with him, that the rates

Digitized by Google

should be re-established, as nearly conformable to the anciently established ones, as may yet be practicable. We are also persuaded that this most essential object is to be satisfactorily accomplished through the efficient service of the Canoongoes and Putwarries; and from such other sources of information as may be available by the Collectors, whether from old records, or from tradition among the Natives."

14. And in Paragraph 82 of the same letter, the Court add: "We cannot conclude our observations on these truly important subjects without stating, that it has been highly gratifying to us to observe such a coincidence of opinion with us, as that exhibited in your despatches of the 19th August and 17th October 1815; and in the documents which accompanied them, on matters which we deem to be intimately connected with the character of our administration, and with the welfare and prosperity of the great body of the people; and we join most cordially in the hope you express, that the inquiries and discussions now pending on these matters, will lead to the adoption of substantial reforms in no slight degree beneficial to the general interests of the country. The task in which you are now engaged is one of no small labour and difficulty, but is one, which, if entrusted to persons intimately acquainted with Mofussil affairs, will amply reward the exertions of those who may contribute their time and talents to its execution. The work to be done well, must be carried on progressively and carefully. It is also of vital importance to its permanent success, that, after the foundations shall be rightly laid, it be steadily superintended in its ordinary and settled details, by those who, from their knowledge, experience, and activity in the Revenue Department of our service, are the most competent to acquit themselves satisfactorily in the duties attaching to that responsible charge."

15. These observations, which are confirmed by the whole of the Correspondence of this Government with

Digitized by Google

the Court of Directors, on the subject to which they refer, indicate the Revenue Officers rather than the Judicial, as those to whom we must chiefly look for ascertaining, preserving, and restoring the rights and privileges of the under-tenants of land in Bengal and the other Provinces, in which the public assessment has been fixed in perpetuity. The Collectors and superior authorities in the Revenue Department, are now the principal guardians of the fiscal rights of the Government; and it seems proper that they should also be regarded as conservators of the prescriptive rights of landlord and tenant; especially of the latter, since the great body of Indian Peasantry have, by the permanent settlement of the land revenue with the Zemindars and Talookdars, been placed more at the disposal of those landholders, and more out of the reach of the direct influence and control of the executive Government, in the regulation of their rents and maintenance of their respective tenures, than they were at any former period, under the Native or British administration.

16. It is, however, a question of considerable difficulty, and upon which I must confess I have felt great hesitation in forming any decided opinion, in what manner the Collectors should be instructed to proceed, for the gradual, but certain attainment of the object proposed; so as, on the one hand, not to infringe the stipulated rights, or equitable claims of the landholders, with whom a settlement has been made for the revenue of their estates in perpetuity; and, on the other hand, to secure, as far as may be now practicable, the prescriptive rights and privileges of the Khoodkhast Ryots, and other immediate occupants and cultivators of the soil, as known to have existed before that settlement was concluded.

17. It is true that the Governor General in Council, by his proclamation of 22d March 1793, as well as by Regulation I. of the same year, expressly reserved the power to "enact such Regulations as he may think neces-

Digitized by Google

sary for the protection and welfare of the dependent Talookdars, Ryots, and other cultivators of the soil;" and it was declared, that "no Zemindar, independent Talookdar, or other actual proprietor of land, shall be entitled on this account, to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay." It was also provided in Section LXVII. Regulation VIII. 1793, "that such of the restrictions on actual proprietors of land and farmers, who held farms immediately of Government, as are set forth in their respective Cubooleeats, and are not repeated by any Regulation, printed and published in the manner directed in Regulation XLI. 1793, are to be considered in full force;" and one of these restrictions was, "that implicit obedience be shown to all Regulations which have been, or may be prescribed by Government, concerning the rents of the Ryots, and the collection from under-tenants and agents of every description; as well as from all other persons whatever; the fullest confidence being entertained, that all such Regulations will be consonant to equity, and for the general benefit of the community." Whilst the spirit of this stipulation, therefore, is strictly adhered to, the landholders and farmers can have no just ground of dissatisfaction, though I fear that, in some instances, it will be difficult to determine what is equitable.

18. I have the best, (though private,) authority for believing that in one district, (Burdwan,) between the years 1800 and 1810, the rents of the Ryots had, in general, been nearly doubled; "viz. where in 1800, a Ryot holding 10 Beegahs, paid to his landlord 16 Rupees, [he, in 1810,] had to pay 30, though no change might have taken place in the article cultivated." It is added in the private letter, from which I have made this extract,* "*I know not what may have been the state of*

* I hope for the excuse of my esteemed Colleague, Mr. Bayley, in naming him as the Writer.

Digitized by Google

comfort which that Ryot may have enjoyed in Burdwan, in 1800, *but he certainly now can hardly support himself; almost every peasant is shackled with debt and harassed with the payment of rent, which appears excessive with reference to his net profits.*" This condition of the peasantry in Burdwan was, indeed, stated to be "chiefly ascribable to the introduction of the Putnee system, under which there are three, four, five, and sometimes more links in the chain of intermediate tenantry between the landlord and the cultivator, and each of these middle men looks, of course, for some profit, which ultimately falls upon the Ryots." But with every allowance for this special cause of an extraordinary enhancement of the land rents in Burdwan, I fear there is too much reason to conclude, that there has been a very general advancement of the rents of land in the Province of Bengal, during the period which has elapsed, since the formation of the permanent settlement in 1790, and if engagements have been taken for it from the cultivators and under-tenants, I see not how they can be set aside at this time, unless shewn to have been extorted by compulsion, or to be otherwise unlawful.

19. Where no voluntary engagement may have been executed, and the tenure is of a permanent nature, (such as that of a Khoodkhast occupant,) held, according to established usage, on condition of paying a specific rent, or a rent determinable by a fixed rate, or other known principle of adjustment, there seems to be no just and sufficient reason, why any excess taken in past years above the proper rent which ought to have been received according to the conditions of the tenure, should be authorized and allowed to be taken, without the consent of the tenants, in future years. On the contrary, it appears to be the duty of the Government, in relinquishing their interest in, and control over, the rents of the Ryots, in such instances, to adopt every practicable means of guarding the established tenures against in-

Digitized by Google

fringement by the landholders and farmers, to whom the rents are now payable. A distinction, however, must, I conceive, be made between the ancient tenures, which subsisted before the permanent settlement, and such as have been since created by the landholders with whom that settlement was made, or their representatives. If waste lands have been brought into cultivation on specific conditions, voluntarily accepted by the tenant, or any other tenures have been acquired from the landholders since the formation of the permanent settlement, and such conditions and tenures are legal and unexceptionable under the Regulations in force, they must, I think, be maintained. These points, however, may be provided for by the Regulation, which it will be necessary to enact for defining the duties and powers of the Revenue Officers.

20. Another question is, whether the Collectors should proceed at once to form a new Jummabundy, or rental of the rents payable by the Ryots, village by village, throughout their respective districts, without waiting for any application from either landlord or tenant, or whether they should, as in matters of judicial cognizance, wait the receipt of claims or complaints, to warrant their official interference.—In all estates belonging to the Company, by purchases at the public sales, or otherwise, there would, of course, be no obstacle to the former mode of procedure; and it might also, I conceive, be adopted in ward estates, whilst under charge of the Revenue Officers, with some restriction, perhaps, to guard against injury to minor and other ward proprietors, by improvident leases extending beyond the pupilage of the ward. But with these exceptions I am disposed to think the interposition of the Collector to ascertain the tenures and adjust the rents of Ryots and other under-tenants of land, should be confined to cases in which the aid of his authority may be applied for, in the usual mode of petition to the Court of Maul Adawlut.

Digitized by Google

The object of the Collector's interference being simply and exclusively to do justice in transactions between the landholders and farmers of land, and their under-tenants; his duty, in all such cases, will be strictly judicial; and will, therefore, properly appertain to him in his capacity of Superintendent of the Maul Adawlut. The same duty would, of course, equally devolve upon any other officer whom Government might appoint to the Superintendence of that Court, either in an entire Collectorship or in any Pergunnah or other local division. And it has occurred to me, that much public advantage in economizing our limited European Agency, might arise, from a new distribution of business between the Maul and Dewanny Adawluts, [or Revenue and Civil Courts,] which should give to the former, [under the control of the Superintending Boards,] the adjudication, on summary inquiry, of the Jumma or annual rent, payable by Ryots and other under-tenants of land, to the landholders and farmers, by whom such rents are receivable; leaving claims to arrears on the Jumma so adjudged, or complaints of exactions beyond its just amount, cognizable in the Civil Courts; viz. those of the Moonseff, Sudder Aumeen, Register, and Zillah or City Judge; according as they may be within the jurisdiction of any of these Courts. By such an arrangement, the Civil Courts would be relieved from the most embarrassing part of their present duty; whilst, at the same time, it seems to offer the best means of ascertaining the actual tenures of the Ryots and cultivators, of every denomination; and securing them from future encroachment by the landholders and farmers, to whom their rents are payable.

21. I must, at the same time, in candour acknowledge, that one of the most intelligent Officers of Government, in the Territorial Department, [Mr. Holt Mackenzie] has proposed another mode of proceeding, in the original Draft of a Regulation proposed by him, as noticed in my

Digitized by Google

former Minute,* and I now comply with his request, by annexing a copy of that Draft,†— the 9th Section of which is as follows :—

" *First.* It shall be competent to the Governor General in Council, by an Order in Council, and to the several Boards of Revenue respectively, to authorize Collectors and other officers exercising the powers of Collectors, to call upon any Zemindar or other Sudder Malgoozar, or any holder or proprietor of land, exempt from the payment of revenue, and upon any Mofussil Talookdar, Ijardar, Kutkinadar, or other lease-holder, intermediate between the Ryots or actual cultivators, and the Sudder Malgoozar or Lakherajdar, collecting the rents or revenues of lands, within the jurisdiction of such Collector, or other officer aforesaid, to furnish, within such period as may appear reasonable and proper, not being less than six weeks, a list of all villages which, or any part of which, may be comprised within the tenure of such Sudder Malgoozar, Lakherajdar, or intermediate holder ; and of the Putwarrees employed in keeping the accounts of the same, or any part thereof, together with a statement specifying the names of their under-tenants ; the lands held, and the rents payable by each ; and copies of the Pottahs and Cubooleeuts granted to or received from such tenants."

" *Second.* The aforesaid requisitions may and shall, [in cases where the measure may appear advisable,] be confined to a statement of the different sorts and descriptions of land and the rates of rent chargeable on each, or otherwise modified, as the Governor General in Council, or Boards of Revenue respectively may see fit to direct."

" *Third.* Any villages belonging to a Zemindar or other Sudder Malgoozar, which may be omitted from the statement furnished by him, under a requisition made as

---

* Dated 28th November 1825. † Marked A.

Digitized by Google

above, shall be considered as liable to assessment under the provisions of Section XIII. Regulation II. 1819."

"*Fourth.* Provided also, that any neglect or disobedience of an order issued under the above provision, shall subject the party offending to the penalty prescribed in Section XI. Regulation XII. 1817; and all suits preferred by a Sudder Malgoozar, Lakherajdar, or intermediate holder, on whom such an order may have been served, for the recovery of rent from any Ryots, or under-tenants, or on account of any lands, of which a statement shall not have been furnished as required, shall be non-suited with costs. Provided also, that when any such order shall have been served on any Sudder Malgoozar, Lakherajdar, or intermediate holder, if such Malgoozar, or other person aforesaid, shall have assigned or let the land, or transferred the collections from the cultivators, to any under Talookdar, Kutkinadar, or other middle-man; and shall not be able to furnish a complete statement of all the persons, by whom the lands included in his estate may be occupied, with the lands held and rents payable by them; he shall, nevertheless, furnish a statement of the tenants, who hold directly under him; and shall transmit to them a copy of the requisition made by the Collector, or other Officer aforesaid, in order that they may similarly, and under the like penalty, furnish a statement of the persons from whom, and the tenure on account of which they collect rent or revenue. The same rule shall apply to all classes of persons holding intermediately, between a Sudder Malgoozar, or Lakherajdar, and the cultivators of the soil: And Sudder Malgoozars, Lakherajdars, and intermediate holders, shall not be subject to the penalty above prescribed, when they shall establish, to the satisfaction of the Collector or the Board, that they have furnished all the information possessed by them relative to the lands included in their tenures, and the persons by whom they are occupied or the rents col-

Digitized by Google

lected; but the penalty shall attach to the under-tenant, who may actually withhold the required particulars, or any part of them."

"*Fifth.* It shall be similarly competent to Collectors, and other officers exercising the powers of Collectors, to require Zemindars, and other Sudder Malgoozars, Lakherajdars, and intermediate holders of land, to fix the rates at which they may be willing to allow the lands held, or managed by them, to be cultivated; and to tender Pottahs to the cultivators and other under-tenants: And if, after due warning to the parties concerned, it shall appear, that Pottahs have not been granted as required, or that the rates and conditions on which the cultivators and under-tenants are to cultivate and occupy land are not adjusted; or, if the statements and accounts which the Collector, or other officer may have duly required, shall not be furnished; it shall be competent to the Board of Revenue, with the sanction of Government previously obtained, to depute the Collector or other officer, to make a Mofussil settlement of the Mehal, and to grant Pottahs to the cultivators and under-tenants, in the same manner, and with the same powers, as are vested in Collectors making or revising settlements under the rules of Regulation VII. 1822."

22. The 9th Section of Regulation VII. 1822, referred to in the last Clause above cited, vests the Collectors of the districts, in which the land revenue is still open to periodical adjustment, with the following powers.

"*First.* It shall be the duty of Collectors, and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land revenue, to unite with the adjustment of the assessment, and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible informatian in regard to landed tenures, the rights, interests, and privileges of the various

Digitized by Google

DATE 31 MAY 1963

NAME Gilbert

No books from open shelves may be reserved

y. For this purpose,
e formation of as ac-
ocal usages connected
cticable a specification
on and property of the
or transferrible interest
re being taken to dis-
ossession and property ;
the interests held, more
ay hold interests in the
kinds or degrees. This
hyachara villages, or the
r of all the Coparceners,
ivisions, such as the Put-
lso, as far as possible, of
ls, disposes of its produce,
or as agent for one or more
posing of its produce, or
receiving the ... common ; with a detailed statement of the interior arrangements adopted by the brotherhood, for the distribution of the profits derived from sources common to the coparcenency where any such exists, and for determining the share of the Government Jumma, and of the village expences, which each parcener is to contribute, or the other modes in which the engaging parcener, or intermediate Putteedars and Behereedars collect from the cultivators. A record shall likewise be formed of the rates per Beegah of each description of land, or kind of produce demandable from the resident cultivators, not claiming any transferrible property in the soil ; whether possessing the right of hereditary occupancy or not ; and the respective shares of the Sudder Malgoozar or other manager, and the cultivator in lands cultivated under Kunkoot, Bataie, or similar engagements, with a distinct specification of all cesses or extra collections made by the Malgoozar, or Village manager or other. The names of all the village Putwarrees and

Digitized by Google

Village Watchmen shall also be registered, with a statement of the amount and nature of the allowances assigned to them, and all Lakheraj tenures shall be carefully recorded, with a specification of the nature of the tenure. The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature; it being understood and declared that all decisions on the demands of the Zemindars shall hereafter be regulated by the rates of rent, and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceeding, until distinctly altered by mutual agreement, or after full investigation in a regular suit. And all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government Jumma, shall be held illegal and unauthorized, unless now or hereafter specially sanctioned by Government.

Second. Provided also, that it shall be competent to Collectors and other Officers as aforesaid, [subject to the orders of the Board of Commissioners,] to grant Pottahs to the several Mofussil Zemindars and Ryots, or other owners or occupants of land for the land owned or occupied by them, specifying the amount to be paid by them, and all the conditions attaching to their tenure; and a register of all Pottahs so granted, shall form a part of the Roobakaree of settlements.

23. Now, however proper it may be, to vest the Revenue Officers with the powers above specified, in all instances where a permanent settlement has not been made with the land-holders, and however much we may regret that it was not done in the Lower Provinces, [as virtually proposed by Mr. Shore,] before the rights and interests of the State, in the land rents payable by the Ryots, and other occupants of the soil, were made over by composition and contract in perpetuity to the persons, who engaged for the land revenue receivable by Government, I cannot but entertain some doubt, whether we

Digitized by Google

should now be warranted in taking out of the hands of the land holders, and placing in those of the Collectors or other Officers of Government, the entire adjustment of the rents of their estates, and the grant of Pottahs, or leases, to the whole of their under-tenants, except in cases of judicial character, in which the interference of public authority may be called for to render justice between landlord and tenant, and the usual application for that purpose may be made by one party or the other.

24. It has indeed been determined by the highest authorities, that the Government is still at liberty to regulate the rents of the Ryots, in the Lower Provinces, if it appear expedient by a course of proceeding similar to that prescribed for the Western Provinces.

25. In a letter to the Court of Directors, from the Territorial Department, dated 1st August 1822, [Para. 109], the Governor General in Council remarked as follows:

"In the Ceded and Conquered provinces, our separate despatches relative to the settlement will show that we design, as far as practicable, to adjust, through the agency of the Collectors, the rights and interests of every Ryot in every village as it may be settled: and specifically to define the rights of the Zemindars with reference to the Mofussil Jummabundy so made. The existence of the permanent settlement in the Lower Provinces does not, in our judgment, oppose any legal bar to the adoption of a similar course there, if we can command a sufficiency of fit instruments, and the scheme be generally deemed expedient; for Government, in limiting its demand specifically reserved the option of such an interference, and if the Zemindars have themselves failed to assess their Ryots, and to issue Pottahs on equitable terms, as provided, such an interference would require no other justification than the proof that it could be expediently exercised."

26. The Court of Directors in replying to the above

Digitized by Google

letter on the 10th of November 1824, after expressing their satisfaction on the agreement between their own views and those of this Government, on a subject of paramount importance, added: "It is in the highest degree important that your design of adjusting the rights and interests of the Ryots in the Villages, as perfectly in the Lower as in the Upper Provinces, should be carried into effect. The doubts which we have already expressed with respect to the sufficiency of the Collector's agency, will receive from you a due degree of attention. The complaint you make with respect to the limited extent of the machinery which you can apply, is of serious importance; you certainly do not estimate too highly the danger of performing such inquiries precipitately and without due security for their being sufficiently exact; and from your assurance that the matter will continue to command your most anxious attention, we feel confident that no necessary delay will be incurred. If the great cause of delay is the inadequate extent of the Agency you can employ, it is important to consider by what means it may be practicable to enlarge it. We shall have the greatest satisfaction in receiving the result of your deliberations upon this subject, and shall be ready most zealously to co-operate with you for the speedy accomplishment of so desirable an end. Should you succeed in securing to the Ryots those rights, which it was assuredly the intention of the permanent settlement arrangements to preserve and maintain; and should you, in all cases where the nature and extent of these rights cannot be now satisfactorily ascertained and fixed, provide such a limit to the demand upon the Ryots as fully to leave to them the cultivator's profits, under leases of considerable length, we should hope, that the interests of that great body of the agricultural community may be satisfactorily secured."

27. There can be no question of the right and duty of Government to interpose its authority between the land-

Digitized by Google

holders, who now hold their estate on the terms of the permanent settlement, and the under-tenants of land for whose protection and welfare an express reservation was made in the rules and stipulations for that settlement; and, if they cannot be protected from wrong, or secured in the possession of their just privileges, without the adoption of measures similar to those prescribed for the ascertainment and security of the rights of under-tenants in the Western Provinces, I shall fully concur in the justice and expediency of adopting such measures, in all instances where the necessity for them is made evident, and competent instruments can be found for carrying the arrangement into effect. But still, I think, it should not be done without an application for justice by the party aggrieved; nor is it probable that the Collector's attempt to form a Jummabundy would be successful without such an application from either the landlord or tenant; and perhaps, therefore, the previous receipt of such may be intended by Mr. Mackenzie, in the provisions suggested by him; though, in that case, it would be desirable that the enactment should be rendered more specific and restrictive upon this point. The following extract from Mr. Mackenzie's letter to me, will, however, more fully explain the grounds on which he originally proposed, and still recommends that the section above cited, should form part of the new Regulation:

"For the security of the Ryots, anything short of a Mofussil settlement, and the formal record of a Ryotwar Jummabundy, will, I am assured, prove altogether nugatory; you may multiply checks so as seriously to hinder the due realization of the Zemindar's rents, (I think the requisition of a regular suit before enhancing rents may do so) but the end will, I fear, be only increase of litigation, and additional strength to those who are already too strong, but no real security to the weak, that is, the great majority. I think, therefore, that you have essen-

Digitized by Google

tially diminished the chance of doing good, through the proposed Regulation, by omitting the rules I proposed with the view of assessing or compelling the Zemindars to assess all estates for which the Government demand has been fixed on the same principle as is applicable to estates not permanently settled, and to Lakheraj lands. The circumstance that the Government Jumma is fixed, if in some respects it diminishes the power of Government to better the condition of the Ryots, seems to me, on the whole, to facilitate the formation of a Ryotwar settlement. The great difficulty in the West, is the proper adjustment of the public demand. The relative rights of the people are comparatively easy of ascertainment when the inquiry is conducted on the spot. It would no doubt be necessary to proceed slowly at first. But one village properly settled, the way would be paved for the settlement of those adjoining ; and the arrangement would then, I am pretty confident, be found to proceed with great rapidity, without any sacrifice of accuracy."

28. In the same letter, adverting to other provisions in the draft prepared by him, which are either omitted or modified, in that proposed by me, Mr. Mackenzie adds : " Reference to Pergunnah rates is full of danger. Where the Canoongoe Office has been uniformly maintained they seem to be familiarly known ; and in some districts they come near the rates actually chargeable ; but in most districts they cannot be applied without ruin to the Ryots ; and when they come nearest to the actually prevailing rates, they must be applied with so much allowance for *Nabood*, and the like, as to be nearly nugatory ; leaving the actual assessment, which would result from them vague and uncertain. This fact does not appear to have been known to or sufficiently adverted to, by the Author of Regulation V. 1812, and the provisions I proposed on this head, for modifying Sections 6 and 7, should, I think, be restored. I am also of opinion that

Digitized by Google

public sales having been so largely instrumental in upsetting subordinate tenures, it would be, on the whole, proper to include the provisions which I submitted for defining the effect of such sales. The other provisions may as well be kept separate."

28. I have given due attention to these remarks, in revising the proposed Regulation, and have included in the Fourth and Fifth Clauses of Section 7, what I conceive to be the spirit and intention of Mr. Mackenzie's suggested modifications of Sections 6 and 7, Regulation V. 1812, in a form which appears to me more definite and intelligible. It having been determined not to extend the Regulation to the Western Provinces, and the provisions contained in Section 6 of Mr. Mackenzie's draft relative to public sales of land, not being immediately connected with the objects of the Regulation proposed by me, I have not thought it necessary to include them; nor have I, in truth, been able to give them the consideration which they merit. They may, however, be enacted in an additional Section, if it be ultimately judged expedient that they should be included.

29. I have attentively considered the papers noticed in* the margin, which have been received in answer to the letter addressed to the Boards of Revenue for the Central and Lower Provinces, on the 1st March last. I have also read the Minutes of the Senior and Fifth Judges of the Court of Sudder Dewanny Adawlut, received with their Register's letters of 26th January and 13th March last. It was my wish to have entered into a detailed examination of the reasons stated in these documents, against some parts of the proposed enactment, and I had prepared an abstract of the reports from the Revenue authorities for that purpose. But my early embarkation for Europe [a fortnight sooner than I expected] and the infirm state of my health, render it impossible for me to carry this intention into effect. I must therefore content myself with submitting the accompanying

* Letter from Central Board, dated 11th May, with Enclosures. Ditto from Secretary to ditto, with Enclosure, dated 15th June. Ditto from Acting Secretary to Board for Lower Provinces, dated 1st June, with Enclosures.

Digitized by Google

revised Draft,* and with offering a few general remarks on the provisions contained in it.

* Marked B.

30. It appearing that the term *Khoodkhast*, though so well known in Bengal, is not in use in Behar and the more Western Provinces;—where, however, the term *Chupperbund* is stated by Sir Edward Colebrooke to be used synonimously "for the same description of person," viz., a Ryot cultivating lands within the limits of the village in which he resides, I have altered the title of the Regulation accordingly, and have used the word "Chupperbund," as well as "Khoodkhast," in the Preamble and some other parts of the Regulation.

31. I was led to use the term *Cudeemee* Ryot, by the adoption of it in Section 32, Regulation XI., 1822, to express with Khoodkhast, a "resident and hereditary cultivator, having a prescriptive right of occupancy;" and I add "Mouroosee," as more distinctly noting the hereditary nature of the tenure. In consequence, however, of the objection stated to those terms, as not being sufficiently definite, I have omitted them in the revised Draft, and in the title have defined the resident Ryots, to whom the Regulation chiefly refers as those "who, by prescriptive usage, are entitled, on certain conditions, to the permanent occupancy of the lands cultivated by them within the limits of the village in which they reside." They are further defined in Section 2, as "Khoodkhast, Chupperbund, and other resident Ryots, who cultivate lands within the limits of the village in which they reside, and are entitled by prescription to a permanent heritable right of occupancy, subject to the payment of a specific rent, or a rent ascertainable by the rates of the Pergunnah, or other known rules of adjustment."

32. Little objection has been offered to the declaratory Sections 2 and 3, and by several of the public Officers it is thought they will be of essential use in removing misapprehension of the intention of Government, in the former rules therein referred to. I have,

Digitized by Google

therefore, retained them in the revised Draft, with a few verbal amendments.

33. The First Clause of Section 4 is also not objected to. But the provision against enhancement of rent in certain cases, without a written engagement, or a judicial decision in a regular suit, which was proposed in the Second Clause of that Section, with a view to promote the security of permanent under-tenants from unjust demands of increased assessment, is opposed by several respectable authorities, on account of the delay of a regular suit; and the consequent inducement which the Ryot would have, to contest all demands of an increase of rent however just. I have therefore omitted this Clause, which does not appear to me essential, under the provision already made by Section 33, Regulation XI., 1812.

34. The first Clause of Section 5 is merely explanatory of existing rules. The provision for a regular suit in the Second Clause, when an under-tenant may not have specifically engaged for an increase of rent, and may contest the justness of the demand for it, allowing the tenant in such cases to have his property released from distraint, on payment of the rent demandable from him in the preceding year, is objected to upon the same grounds as those already stated against the Second Clause of Section 4; and I have in the revised Draft provided for a Summary Suit in such cases, which I trust will obviate all real grounds of objection to a provision that appears to me perfectly just in principle, and necessary to secure the Ryots against the grossest abuse of the powers vested in the landholders to recover arrears of rent by distraint.

35. On full consideration of the reasons stated by several public officers for modifying the Third Clause of Section 5 in the original Draft, which proposed to guard against the undue ejectment of an under-tenant, possessing a permanent right of occupancy in his tenure, by

Digitized by Google

providing that he should not be ejected on a plea of default and forfeiture, except under the authority of a decree of Court given in a regular suit, I have omitted that Clause in the revised Draft, and substituted the rules contained in Section 6, the second Clause of which is founded on the suggestions of some of the Revenue Officers, (particularly the Collector of Sylhet,) for an addition to the Rule already established by the Fifth Clause of Section 18, Regulation VIII. 1819.

36. I have also, in the Third Clause of the same Section, modified the provision before stated, for the punishment, on conviction before the Magistrate, of ejectment by force or threats. The Clause, as it now stands, is more definite, and besides a penalty to Government, provides (as recommended by several of the Revenue officers,) for a full indemnification for losses and damages sustained by the tenant from the illegal ejectment.

37. Mr. Halhed objects to the Sixth Section of the original Draft, that the rule contained in it for a careful investigation and record of the right of parties in all cases of disputed tenures of a permanent nature will take up too much of the time of the Courts. But I do not find this objection stated by any other person, and have therefore retained the Rule in Section 7 of the revised Draft.

38. In revising Section 7 of the original Draft I have seen no reason to alter the First and Second Clauses. The Third Clause I have thought it necessary to modify, in consequence of the objections stated to the unqualified exemption from enhanced assessment of Istimrary tenants, who have paid a fixed rent for twelve years subsequent to the permanent settlement of the land revenue.

39. I have also, in the Fourth and Fifth Clauses of Section 8 of the revised Draft, introduced considerable variation in the Rule before proposed, for adjusting the rents of under-tenants not entitled to hold their tenures at a fixed rent, under the preceding rules, but possessing

Digitized by Google

a permanent right of occupancy at the established rate of the Pergunnah or other local division. In these Clauses I have, as already noticed, attended to the spirit and intention of Mr. Mackenzie's proposed modifications of Sections 6 and 7, Regulation V. 1812. I have also adverted to the distinction noticed in a former part of this Minute, (para. 19,) between the ancient hereditary tenures which subsisted before the permanent settlement, and such as have been since created; and I have suggested what appears to me an equitable principle to be observed in applying the local rates of assessment to either of these descriptions of under-tenants. I have further endeavoured to provide, in all cases of rents, adjustment by the officers of Government, for the tenants receiving a fair and reasonable profit, after defraying the expenses of cultivation, and allowing for contingencies of season and other casualties.

40. The only remaining part of the revised Draft which I have to notice is the Ninth Section. In the first and second clauses of this Section I have stated the powers now vested in the Collectors of the land revenue, for the investigation and summary decision of disputed claims of rent, and other matters of contest, between landholders and farmers of land and their under-tenants. In the third Clause I have endeavoured to provide, in the manner which appears to me the least open to objection, for empowering the Collector, or other Commissioned officer, to make a measurement and Mofussil Jummabundy, and to grant Pottahs to the Ryots, in like manner as the Collectors in the Western Provinces are authorized, by Regulation VII. 1822, whenever it may appear, from the representations of the Ryots, in any village or villages, to the Collector of the district, or from any proceeding held by the Collector, in his judicial capacity, that any landholder paying revenue to Government, or any Lakherajdar, or an intermediate leaseholder or occupant of land, between the Sudder Malgoozar or

Digitized by Google

Lakherajdar, and the cultivators of the soil, has neglected to adjust the rents of the Ryots, as required by the Regulations in force; and to grant Pottahs as therein directed.

41. I cannot flatter myself that the revised Draft, as thus proposed by me, will prove complete, or entirely satisfactory. I am sensible that it is still defective, and does not come up to what I myself suggested for the consideration of the Court of Sudder Dewanny Adawlut in a Minute recorded by me, in the Judicial Department, and dated 5th September last. It is, however, the result of my best endeavours to do all that my state of health would permit for the security of a large class of the Indian agricultural community, whose condition, under a misapprehension of the Rules for the permanent settlement of the land revenue, and particularly of the proprietary rights intended to be recognized in behalf of the Zemindars, Talookdars, and other principal landholders, has long attracted the attention, and excited the interest, of the Government here, and of the Court of Directors in England. I now commit this close of my Official labours, after an actual residence in India of more than Forty years, to the just and humane consideration of those whose province it will be to pass a final decision upon the subject.

(Signed) J. H. HARINGTON.

July 3d, 1827.

Digitized by Google

B.

A REGULATION for maintaining the Rights of KHOOD-KHAST, CHUPPERBUND, and other resident RYOTS, who, by prescriptive Usage, are entitled, on certain Conditions, to the permanent Occupancy of the Lands cultivated by them within the limits of the village in which they reside.

IT is well known that, according to the ancient law and custom of India, all persons, from whom the land revenue was received into the public treasury, were subject to rules and restrictions established by the ruling power, with a view to the security of the great body of the cultivators from arbitrary demands; and, from the earliest period at which the British Government took upon itself the Civil administration of the provinces, which have, at different times, become subject to its authority, the justice and expediency of adopting measures for the adjustment of the rents demandable by the Zemindars, Talookdars, or other persons under engagement for the Government Revenue, from the Ryots and other under-tenants of land, appear to have been fully recognized. More particularly the Marquess Cornwallis, when proposing to bestow upon the Zemindars and Talookdars of Bengal, Behar and Orissa, the benefits of a permanent settlement, declared his opinion that "Every Beegah of land possessed by the Ryots must have been cultivated under an express or implied agreement that a certain sum should be paid and no more. That every Abwab, or tax, imposed by the Zemindars over and above that sum, is not only a breach of that agreement, but a direct violation of the established

Digitized by Google

law of the country; that the Cultivator, therefore, has in such case an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress; that the rent of an estate can only be raised by inducing the Ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of Waste land which are to be found in almost every Zemindary in Bengal; that the Zemindars neither now, nor ever could, possess a right to impose taxes, or Abwabs, upon the Ryots; and if, from the confusion that prevailed towards the close of the Mogul Government, or from a want of information since we have had possession of the country, new Abwabs have been imposed by the Zemindars or Farmers, that Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority, and to establish such Regulations as may prevent the like abuses in future." In like manner, the Honourable Court of Directors, in a letter dated the 19th September 1792, expressly declared that, while they confirmed to the landholders (meaning the Zemindars and Talookdars) the possession of the districts which they then held, "and subject only to the assessment then settled; while they disclaimed any interference with respect to the situation of the Ryots, or the sums paid by them, with any view to an addition of revenue to themselves; they expressly reserved the right, which clearly belonged to them as Sovereigns, of interposing their authority in making, from time to time, all such Regulations as might be necessary to prevent the Ryots being improperly disturbed in their possessions or loaded with unwarrantable exactions;" adding, "that their interposition, where it was necessary, seemed also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim, that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land

Digitized by Google

he occupied: that this necessarily supposed, that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the Zemindar; for that otherwise such a rule would be nugatory." In pursuance of the above principles, it was declared in the Proclamation of 22d March 1793, which preceded the decennial settlement of Bengal, Behar and Orissa, and repeated by an express enactment in the First Clause of Section 8, Regulation I. 1793, that, "it being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary, for the protection and welfare of the dependant Talookdars, Ryots, and other cultivators of the soil," and Regulation VIII. 1793, which contains the original rules and conditions of the decennial settlement of Bengal, Behar, and Orissa, prohibits the imposition of any new Abwab or Cesses upon the Ryots, under a penalty equal to three times the amount; prescribes the consolidation of existing demands of rent within a limited period; directs the issue of Pottahs by the Zemindars, and other landholders, with the amount or rate of rent specifically adjusted; and provides that a Ryot, when his rent has been ascertained and settled, may demand a Pottah from the Zemindar or other person, under whom his tenure is held: also with reference to the ascertained rights and privileges of the Khoodkhast Ryots in Bengal, (being those who cultivate lands on permanent tenures, within the limits of the village in which they reside,) that no proprietor or farmer of land should cancel the Pottahs of the Khoodkhast Ryots, except upon proof that they had been obtained by collusion, or that their rents had been reduced, within the last three years, below the rate of the Nirkbundy of the Pergunnah, or upon a general measurement of the Per-

Digitized by Google

gunnah, for the purpose of equalizing and correcting the assessment. In the Regulations applicable to Benares, it was distinctly enacted, that all Abwab or Cesses, introduced subsequently to the Fusily year 1187, should be abolished, and the demand on the Ryots was fixed by the rates of that year, with a provision, that the rent of waste land, intended to be brought into cultivation, should be adjusted at such rates as the Ryots might agree to pay without Abwab. The rules relative to the permanent settlement also prescribed, that Putwarries should be appointed in each village to keep the accounts of the Ryots; and made further provisions for the protection of the Ryots against unauthorized demands, and for the adjustment of the instalments, according to which the annual amount justly demandable from them should be collected. Thus, although the Ryotwarry assessment of estates was left chiefly to the Zemindars and Talookdars, the intention of the Government clearly was, that, in regard to all classes of cultivators, or under-tenants, possessing a permanent right of occupancy, such as the Khoodkhast Ryots in Bengal, and Ryots of the same description, who are also denominated Chupperbund in that Province, as well as in the Provinces of Behar and Benares, the legal rates of rent existing at the time of settlement, should be maintained. The Regulations, subsequently enacted, were in no degree designed, nor when duly considered, can they be interpreted as designed, to abridge the rights and privileges belonging to the cultivators of the soil, or other classes subordinate to the Sudder Malgoozars. The provisions made for limiting the term of leases to ten years, and for cancelling engagements entered into by Sudder Malgoozars with their under-tenants, in certain cases of public sales for arrears of revenue, cannot justly be held to affect tenures, rights and privileges possessed under the ancient law and custom of the country, independently of all specific engagements; since, when such leases cease, or

Digitized by Google

such engagements are cancelled, the parties revert, of course, to the condition, in which they previously stood; and it was expressly declared in the Regulations, that, no proprietor or farmer of land, or other person should be authorized to require Ryots, whose Pottahs might expire, or become cancelled, to take out new Pottahs at higher rates than the established rates of the Pergunnah, for lands of the same quality and description. With still less justice can the rules contained in Sections 2 and 3, Regulation V. 1812, and Section 2, Regulation XVIII. of the same year, be construed as abridging the rights and privileges of the cultivators, or other classes paying rent to Sudder Malgoozars, or persons under engagements for the payment of the Government Revenue. By these rules, it was intended to remove the restrictions imposed by former Regulations, in regard to the term for which leases might be granted, and the forms in which Pottahs should be written. But it was in no degree designed to vest the Zemindars, or other Sudder Malgoozars, with any rights inconsistent with those possessed by their under-tenants, or to authorize their demanding a higher rent than was demandable, according to the ancient law and usage of the country, or in any respect to annul or diminish the title of the Ryots, to hold their lands subject to fixed rent or rents determinable by fixed rates, except in cases wherein both parties might for their mutual advantage, voluntarily enter into new engagements. It nevertheless appears, that the meaning and intent of the above rules have been misunderstood; that the Zemindars, and other Sudder Malgoozars having in these and former Regulations, been denominated proprietors of land, they have erroneously, and without enquiry, been recognized as the sole possessors of all hereditary, as well as all transferable rights and interests attaching to the land, to the exclusion of all other Classes; and the Regulations of 1812, have been construed to give them the power of

Digitized by Google

demanding any rent they may think proper, without regard to the ancient law or local usage. Further, it appears that the rules enacted, for the purpose of enabling Zemindars, and other Sudder Malgoozars to collect their dues from their under-tenants with punctuality, have operated to repress the Cultivators of the soil, and subject them to arbitrary exactions and distress. By Sections 30, 31, 32 and 33, of Regulation XI. 1822, provision has been made for removing some of the misconceptions, which appear to have prevailed in regard to the effect of a public sale, and the rights vested in the purchasers at such sales. Regulation VII. 1822 has also fully provided for maintaining the rights of the Ryots, and other under-tenants of land in the Ceded and Conquered Provinces, in all cases of a detailed settlement being formed by the Officers of Government, under the provisions of that regulation. But in the Provinces of Bengal, Behar, and Orissa, (exclusive of Cuttack), as well as in the Province of Benares, where the land Revenue has been settled in perpetuity, for the purpose of more fully declaring and establishing the relative rights and privileges of the different classes of persons owning, occupying, or cultivating land, and sharing in its produce, further declarations and provisions appear to be requisite, and additional rules are necessary for the guidance of the Courts of Judicature, and other public authorities, in all cases wherein they may be authorized to adjust and determine the rents payable by Ryots, and other under-tenants of land. With reference, therefore, to the above principles and objects, the following rules have been enacted, to be in force from the date of their promulgation in the Provinces of Bengal, Behar and Orissa (exclusive of Cuttack and its former dependencies), as well as in the Province of Benares.

Recognition of rights of Zemindars and other proprietors of Malgoozary lands in existing Regu-

II. It is hereby explained and declared, that in recognizing the hereditary and transferable rights of Zemindars, independent Talookdars, and other actual proprietors

Digitized by Google

of Malgoozaree lands, in their respective Zemindaries, Talooks, or other estates, as specified in the Regulations of 1793, for the Provinces of Bengal, Behar and Orissa, and in the Regulations of 1795, for the Province of Benares, it was not intended to abrogate or abridge, in any degree, the prescriptive rights and privileges of dependent Talookdars, village Zemindars, hereditary and permanent Ryots, or any other description of under-tenants, or cultivators of the soil of whatever denomination. On the contrary, it was always the intention of Government, and it is now expressly enacted for the guidance of the Courts of Judicature and other public authorities, that dependent Talookdars and other under-tenants possessing an heritable and transferable property in the tenures held by them respectively, as well as Khoodkhast, Chupperbund, and other resident Ryots, who cultivate lands within the limits of the village in which they reside, and are entitled by prescription, to a permanent heritable right of occupancy subject to the payment of a specific rent, or a rent ascertainable by the rates of the Pergunnah, or other known rules of adjustment, shall be maintained and secured in the possession and enjoyment of their respective tenures, with all rights and privileges appertaining thereto in the fullest extent, to which they may be entitled, whether by written deeds and engagements, or by the established usage of the country, or by the provisions of the laws and Regulations in force. In all such cases, the Sudder Malgoozar, whether a Zemindar, Independent Talookdar, or other description of superior landholder, paying revenue to Government, must be considered to possess only a restricted property and interest, with respect to the lands occupied by permanent under-tenants, such as those above-mentioned; and his rights and privileges, in such cases, must be determined with due regard to the nature and conditions of the subordinate tenures included within the limits of his Zemindary or other estate.

lations not intended to abrogate or abridge the prescriptive rights and privileges of under-tenants or cultivators of whatever denomination.

Zemindars and other superior Landholders possess a restricted property only in such cases, to be determined with due regard to the nature of subordinate tenures.

Digitized by Google

Similar reservation of rights of property or occupancy belonging to the actual possessors or cultivators of land included in Jageers or other Lakheraj grants.

Second. It is, in like manner, declared and enacted, with respect to tenures of every description in Jageers or other Lakheraj lands, the public revenue of which has been assigned to individuals for a limited period, or in perpetuity, that in the existing Regulations, which recognize and confirm certain grants to Jageerdars, or other persons having assignments of the Government revenue, it was not the design of Government, in any degree, to set aside the rights of property, or of occupancy, which may have belonged to the actual possessors or cultivators of the lands included therein, at the period when the Honourable the East India Company acquired the territory comprising such lands; or in the case of grants made by the British Government, at the period when the grant was made.

Explanation of the objects intended by Sections 2 to 11, of Regulation V. 1812; and Section 2, Regulation XVIII. of the same year.

III. It is hereby explained and declared, that the objects of Sections 2 to 11, of Regulation V. 1812, and of Section 2, Regulation XVIII. of that year, were the following and no others.

1st. To remove the restrictions which had been enacted by preceding Regulations, in regard to the term and form of leases, and with specified exceptions, to allow the superior landholders and their under-tenants, mutually and freely consenting thereto, to enter into such contracts as they might deem most convenient, and most conducive to their respective interests, provided that no sanction should be given to arbitrary or indefinite cesses, whether *Abwab* or *Muthote*, or of any other denomination.

2d. To protect under-tenants in estates attached or sold, from the arbitrary annulment of existing leases, within the year, on the plea of such leases being collusive, without a judicial decision to that effect.

3d. To prescribe rules for adjusting the rates of rent payable by under-tenants on the annulment of existing leases, by public sales, for arrears of assessment, especially when no established rates of the Pergunnah, or other local division, might be ascertainable, and to fix the

Digitized by Google

deduction to be allowed, for the profit of dependent Talookdars, in certain cases.

4. To define the process, by which an enhanced rent, when legally demandable from an under-tenant, should be demanded, and to protect the Ryot, though liable by his tenure to an enhancement of rent, from the exaction of such enhanced rent, until it should have been legally demanded.

Rules passed for enabling Sudder Malgoozars to realize the rents payable to them not meant to limit the actual rights of any description of land-holders or tenants.

IV. *First.* Nothing in the rules passed for enabling Zemindars and other Sudder Malgoozars, to realize with punctuality the rents payable to them, was designed or shall be construed, to define or limit the actual rights of any description of land-holders or tenants; nor were the provisions contained in Sections 2 and 3, Regulation V. 1812, and Section 2, Regulation XVIII. 1812, relative to the forms and conditions of the Pottahs and engagements that may be interchanged by Zemindars, and other Sudder Malgoozars with their under-tenants; nor those contained in Section 5, of Regulations XLIV. 1793, L. 1795, and XLVII. 1803, for the annulment, in certain cases, of such engagements intended; nor shall they be construed to prejudice the right of any Ryot, or other under-tenant, entitled to hold the land occupied by him, subject to the payment of a fixed rent, or of a rent determinable by fixed rates or rules of adjustment, according to the law and usage of the country.

Similar explanation of Sections 2 and 3, Regulation V. 1812, Section 2, Regulation XVIII. 1812, and Section 5, of Regulations XLIV. 1793, L. 1795, and XLVII. 1803.

Intention of existing Rules of Process, which have been prescribed for Zemindars and other Sudder Malgoozars, desirous of enhancing the rents of their under-tenants.

V. *First.* The intention of the existing rules, relative to the process to be followed by Zemindars, and other Sudder Malgoozars, desirous of enhancing the rents of their under-tenants, was as follows: viz. that any such Sudder Malgoozar, if legally entitled to enhance the rent of an under-tenant, might secure his right to do so, on account of the ensuing Fussily or current Bengal year, by serving on him a written notice, as prescribed in Sections 9 and 10, Regulation V. 1812, previous to the time of cultivation; and that after such notice, the Sudder Malgoozar might distrain for any enhanced rent, which he

Digitized by Google

might be entitled to demand. But it was not intended, that the prescribed notification should of itself confer any title to enhance the existing rent, or to enforce a demand of enhanced rent, when not specifically engaged for, or otherwise justly demandable.

Further enactment when the Malgoozar may proceed by distraint for the recovery of enhanced rent, without a specific engagement: and the justness of the demand may be denied by the under-tenant.

Second. It is now further enacted, that in cases, in which a Zemindar, or other Sudder Malgoozar, or any person in his behalf, or in behalf of any intermediate landholder, or farmer of land, shall proceed by distraint against a Ryot, or other under-tenant, for a higher rent than was payable by him for the same land in the preceding year; and such higher rent may not have been specifically engaged for by the under-tenant, and the justness of the demand for it may be denied by him; the said under-tenant shall, on paying the amount of rent demandable from him at the rate of the preceding year, be entitled to have his property released from distraint, and the Zemindar or other Malgoozar, shall not be entitled to recover the enhanced rent demanded by him, without proof of his title thereto, by a regular or summary suit to be instituted by him in the proper Local Court. Provided however, that if on investigation, the amount claimed be found justly demandable, and the written notice prescribed in Section 9, Regulation V. 1812, shall have been duly served, at the season of cultivation, judgment shall be given in favor of the Plaintiff, for the amount due, with full costs of suit, and interest at the rate of Twelve per Cent. per annum, from the date on which the rent in arrear was payable. Provided also, that if it be proved in such cases, either that the claim of the Zemindar, or other Malgoozar, to enhance the rent, was unfounded; or that he proceeded to enforce his title to such enhancement without due notice being given at or before the cultivation, his suit shall be dismissed with full costs, and with damages for any excess levied, as provided for by Section 10, Regulation V. 1812.

Digitized by Google

Third. The rules contained in the preceding Clauses of this Section, which respect the Zemindars and other Sudder Malgoozars, shall be held equally applicable to Mofussil Talookdars, Putnee Talookdars, Ijardars, Kutkinadars and other middlemen in their transactions with the cultivators of the soil or other under-tenants of land.

Rules in preceding clauses which respect Sudder Malgoozars, equally applicable to Mofussil Talookdars, Ijardars, Kutkinadars and other middlemen in their transactions with cultivators, and other under-tenants of land.

VI. *First.* The fifth Clause of Section 18, Regulation VIII. 1819, (which was first enacted for the Province of Bengal and the district of Midnapore, but has been extended to all the Provinces under this Presidency by Section 22, Regulation VII. 1812), contains the following provisions respecting Khoodkhast Ryots, or other resident cultivators of the soil: "For any arrears which may be alleged to be due from those classes of persons; the party claiming them may proceed at any time during the year by distraint or by process of arrest and summary suit, under the existing rules. Proprietors, Talookdars, or Farmers, however, to whom an arrear of rent may be due at the end of the year from any Khoodkhast Ryot, or other resident cultivator of the soil, are at liberty to institute a summary suit to establish the existence of such an arrear, taking out process of arrest in the usual form. If the Defendant shall not attend, or cannot be arrested, the forms of process and proceeding prescribed in the Third Clause of this Section, shall be considered to be applicable to the case, and any summary judgment previously obtained on account of rent of the year just closed shall be received as evidence of such arrear, upon the Plaintiff's showing that the judgment in question has remained unexecuted. If an arrear shall be adjudged by the Court to be due, and the amount shall not be immediately paid into Court, the Plaintiff shall be authorized by the Court to make such new arrangement as he may judge proper for the future management of the lands in question."

Recapitulation of Fifth Clause of Section 18, Regulation VIII. 1819.

Second. The summary judgment referred to in the above clause is, of course, as in the other cases of a

For the provision in modification of latter part of the above clause.

Digitized by Google

summary decision, subsidiary to a regular suit in the Civil Court. It is further hereby provided, in modification of the latter part of the Clause above cited, that whenever an arrear of rent may be adjudged in a summary investigation against a Khoodkhast, Chupperbund, or other resident cultivator, entitled to a permanent right of occupancy, whilst he performs the condition of his tenure, he shall be allowed one month, from the date on which the summary judgment may be passed, either to satisfy the same; or, if dissatisfied with the summary award, to institute a regular suit in the Civil Court, for a further trial of the merits of the case: And in the event of his instituting a regular suit, within the time limited, and of his giving security to make good the amount that may be ultimately adjudged against him, with interest at the rate of One per Cent. per mensem, he shall not be ejected from his tenure, whilst such regular suit is depending. Provided further, that, if the Ryot against whom the summary judgment may have been passed in any such instance, shall not be able to give the requisite security, and shall consequently be ejected from the possession of his tenure by the landholder to whom his rent is payable, or any person in his behalf, and he shall, by the institution of a regular suit within six months after such ejectment, obtain a reversal of the summary decision; and establish to the satisfaction of the Court, that he was not, at the time of ejectment, justly liable to a forfeiture of his tenure, he shall be entitled to a judgment for immediate restoration thereto, together with full costs and damages.

Third. Any Zemindar, Talookdar, or other Landholder or Farmer of land, who, by force or threats, may eject a Khoodkhast, Chupperbund, or other resident cultivator, possessing a permanent right of occupancy in the lands held by him, on a plea of default or forfeiture, without having obtained a summary or regular judgment, declaring the tenure of such under-tenant liable to for-

Digitized by Google

feiture, shall, on conviction before the Magistrate, in pursuance of Regulation XV. 1824, be subject to a penalty to Government, equal to three times the annual rent of the land from which the tenant may have been so dispossessed; besides the payment of all costs incurred by the ejected tenant, and a full indemnification to him for all losses and damages occasioned by the illegal ejectment. Provided, however, that this rate shall not be considered applicable to any case in which the under-tenant may have absconded; or may have been deprived of the possession of his tenure, without force or threats. In such cases, which are not cognizable by the Magistrate, under Regulation XV. 1824, the tenant, if he shall consider himself injured, must sue for redress in the Civil Court, or summarily before the Collector, if the case be cognizable by that Officer.

Rights and interests of the parties to be carefully investigated, and recorded by Courts of Judicature, Collectors and other Officers, in all cases of disputed permanent tenure between superior Land-holders, Farmers, or Managers, and Subordinate Tenants of Malgoozary Land.

VII. *First.* In all cases of disputed right, involving a permanent possession or interest between a Zemindar, or other superior Land-holder, farmer, or manager of Malgoozary land, and a dependent Talookdar, Ryot, or other under-tenant, which may come under investigation before a Judge, Collector, Register, Sudder Aumeen, Moonsiff or other Public Officer, duly empowered to take cognizance thereof, it shall be the duty of the Officer so employed carefully to investigate and record the nature of the tenure, and extent of the rights and interests belonging to the parties respectively. The same rule shall be applied to cases of dispute between any Jagheerdar, Attemghadar, or other holder, or manager of Lakheraj land; and any person owning, occupying, or cultivating the land included in the tenure of such Lakherajdar.

Also in cases of dispute between holders or managers of Lakheraj Land, and owners, occupants, or cultivators of Land, in such tenures.

Accounts and information to be furnished by the Village Putwarry and Pergunnah Canoongoe in such cases.

Second. In all such cases, it will be the duty of the village Putwarry and Pergunnah Canoongoe, to furnish any accounts or information required from them according to the rules in force concerning their respective Offices; and whenever it may be necessary to ascertain the actual land tenures and rents of the Ryots, or other

And usual Village Accounts of Land and Rents to be produced

Digitized by Google

by persons, who may have prepared them, or be in possession of them.

under-tenants in a village, Pergunnah, or other local division, the *Chitta Jummabundee*, and other usual accounts of the land and rents, in such village, or other division, shall be produced on the requisition of the Court, or other competent authority investigating the case, by any persons, who may have prepared such accounts for the land-holders or others, or who may possess them at the time of their being required.

Provisions in Regulation XII. 1817, applicable to the accounts referred to in above clause.

Third. The provisions contained in Regulation XII. 1817, for the production of the village accounts by Putwarries, and by the Native Agents of landholders and farmers, on the requisition of the Collectors or Courts of Judicature, and for authenticating the truth of such accounts, by the examination on oath of the persons who may have kept the same, shall be held applicable to the whole of the accounts referred to in the preceding Clause of this Section.

In what suits the Courts of Judicature, Collectors and other authorities, to be guided by the principles declared in the Regulation.

VIII. *First.* In all suits, regular and summary, wherein the Courts of Judicature, Collectors or other Public Officers may be authorized to adjust and determine the rents payable by Ryots, or other under-tenants of land, as well as in all other cases whatever, in which the Officers of Government may be empowered by the Regulation in force, or by the special orders of the Governor General in Council, to adjust the rents payable by the cultivators and under-tenants of land, especially by such as possess a permanent right of occupancy in their respective tenures, subject to a fixed rent, or a rent determinable by the rate of the Pergunnah, or other known rule of adjustment, they shall be guided by the principles declared in this Regulation, as far as the same may be applicable to the case.

In what cases written engagements to be maintained and enforced.

Second. Provided, that in all cases wherein voluntary and lawfully written engagements may have been entered into between the parties, or their representatives, such engagements shall be maintained and enforced; with the exception of any prohibited items of *Abwab*

Digitized by Google

Muthote, or other denomination, declared null and void, by Section 3, Regulation V. 1812, or by any other Regulation in force.

What Istemrardars, or tenants, at a fixed rent, are exempt from any increase of assessment.

Third. Provided also, that no Istemrardar or Tenant at a fixed rent, who having held his tenure at a fixed rent, for a period of more than twelve years, was exempted from any increase of assessment, by the rules of the permanent settlement of Bengal, Behar and Orissa, shall be liable to an enhanced rent for lands, included in the same time, whether the rent paid by him be more or less than the ordinary rate of rent for similar lands in the same village, Pergunnah, or other local division; and whether the Zemindary, Talook, or other estate, comprising such Istimrary under-tenure, shall have been disposed of by public sale for arrears of Revenue or not. Moreover, Istimrary Jotes, or tenures, at a fixed rent of whatever denomination, which may have been actually held at a fixed and invariable rent, for a period of more than twelve years, subsequent to the permanent settlement, in any of the Provinces to which this Regulation is applicable, shall not be liable to any enhancement of the fixed rent so paid, without proof that the tenure was obtained from a person not competent to grant the same; or that the rent was fixed, without due consideration,—such as the cultivation of waste land,—or for other good and sufficient reason, much below the ordinary rate of rent for land of a similar description in the same village or Pergunnah.

Rules of adjustment to be observed, when a Ryot not entitled to hold at a fixed rent, may have a permanent right of occupancy at the established rate of the Pergunnah, or other local division.

Fourth. When an under-tenant may not be entitled to hold his tenure at a fixed rent under the preceding clause, but may possess a permanent right of occupancy, at the established rate of the Pergunnah, or other local division, for similar tenures or lands of a similar description, and such Pergunnah or other established rate may be ascertainable, and found to have been actually used as a standard of assessment in past years, the rent of the under-tenant shall be adjusted accordingly, in pursuance

Digitized by Google

of the rule prescribed in Section 6, Regulation V. 1812; subject, however, to the following modifications.

1st. If the tenure be hereditary, (as the tenures of Khoodkhast and Chupperbund Ryots, antecedent to the permanent settlement of the Land Revenue are understood to have been), and was derived by the present occupant from a person or persons who had possession of it at the commencement of the permanent settlement; and it shall appear that the Pergunnah or other local rates of rent, applicable to such tenure, have been considerably enhanced during the period of the settlement referred to, in opposition to the principles declared in the Preamble to this Regulation, it shall be competent to the Court, Collector, or other Public Officer, authorized to determine the rent justly demandable from the tenant in such cases, to revise the Pergunnah or other local rates of assessment, and to reduce the same, with respect to the hereditary tenures above mentioned, so far as may appear equitable, and consistent with the provisions of this Regulation.

2ndly. It shall likewise be competent to the Court, Collector, or other authorized Public Officer, to exercise a similar discretion in applying the Pergunnah, or other local rates of assessment to the tenures of Khoodkhast and Chupperbund Ryots, or other permanent undertenants of land, when tenures may have been obtained since the formation of the permanent settlement of the land revenue, if it be found, on inquiry, that such Pergunnah or other rates have been much enhanced since the tenure was granted, without good and sufficient reason for such enhancement and without any special agreement or condition, in the Pottah or other title deed of the tenure, which may appear to justify such increase of rent.

Fifth. When no established Pergunnah or other local rate may be ascertainable, or found to have been actually used as a standard of assessment in past years, the rule

Digitized by Google

prescribed in Section 7, of Regulation V. 1812, shall be held applicable, with the following modification. In applying that rule to hereditary tenures, which may have been derived by the present occupants from persons who possessed the same at the commencement of the permanent settlement of the land revenue, due regard shall be paid to the principles declared in the Preamble to this Regulation; and with respect to all tenures of a permanent nature, which have been granted since the formation of the permanent settlement, if a strict application of the rule contained in the Section abovementioned would produce a considerable enhancement of the rent, which was payable when the tenure was granted, without good and sufficient reason, and without any specific agreement to warrant the same, it shall be competent to the Court, Collector, or other authorized Public Officer, to adjust an equitable rent, according to the ascertained or computed produce of the land; and so as in all cases, to leave to the tenant a fair and reasonable profit, after providing for the wages of labour, and every other expense of cultivation; with due attention to the usual contingencies of season, and other casualties; and to any charges beyond the rent payable to the landlord, which, according to established usage, may be justly demandable from the tenant; and may be perfectly consistent with the laws and Regulations in force.

Powers vested in Collectors by Regulation XIV. 1824, and previous Regulations therein referred to.

IX. *First.* By Regulation XIV. 1824, and the previous Regulations therein referred to, the Collectors of the land revenue are empowered to investigate and determine, by summary process, subject to a regular suit in the Civil Court, all claims and demands of rent, and all suits for arrears or exactions of rent between Land-holders or Farmers of land and their under-tenants, which may be referred to them for that purpose by the Judges of the Zillah and City Courts.

Further provision in Sections 20 to 35, of Regulation VII, 1822.

Second. By Sections 20 to 35 of Regulation VII. 1822, extended to all the Provinces under this Presidency, by

Digitized by Google

Section 3, of Regulation IX. 1825, it is further declared competent to the Governor General in Council, to vest any Collector, or other Officer exercising the powers of a Collector, with original summary jurisdiction, in the cases provided for by Section 20, Regulation VII. 1822, either generally throughout the district under his charge, or within such local limits as may from time to time appear to be advisable. These provisions include all suits for rent, which may be preferred by Zemindars, Talookdars, or other Sudder Malgoozars or Farmers of land, or by any person in their behalf against any dependant Talookdar, Zemindar, under-tender Ryot, or other under-tenant, of whatever denomination, as well as all applications by Ryots and other under-tenants contesting the demand of a Sudder Malgoozar or Farmer; and all complaints preferred by Ryots or other under-tenants of whatever description, against Land-holders or Farmers of Land, or their respective agents or representatives, on account of excessive demand, or undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between Land-holders and Farmers of Land, or under-tenants of whatever description, with their sureties, or with any agents, or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt, or payment of the rent of land, whether Malgoozary or Lakheraj, or with the rent of orchards, pasture-grounds, and fisheries, commonly denominated Phulkar, Bunkur, and Julkur, or with any other asset of the Land Revenue not included in the Sayer abolished, together with all complaints of the non-delivery of Pottahs, when demandable under the Regulations; complaints of the prescribed receipts not being given for actual payment of rent; and generally complaints of any deviation from the Regulations, or from the established usage of the country relative to the matters aforesaid, or

Digitized by Google

any violation of subsisting engagements in disputes respecting the rent and occupancy of land between Land-holders or Farmers of Land, and their under-tenants of whatever denomination.

Further provision for a Mofussil Settlement, measurement and Jummabundy by the Officers of Government, in certain cases.

Third. With a view to the more effectual attainment of the objects proposed by the Provisions above-mentioned, and especially for the due enforcement of the rules, which have been prescribed to the Land-holders for the adjustment of the rent of the Ryots, and the grant of Pottahs to such as may be willing to receive the same in the mode provided for by Section 3, Regulation V. 1812, it is hereby further enacted, that, whenever it may appear, from the representations of Ryots in any village or villages, to the Collector of the district, or from any Proceedings held by the Collector, in his Judicial capacity, under the Regulations specified in the preceding Clauses of this Section, that any Zemindar, Talookdar, or other Land-holder paying Revenue to Government, or any Lakherajdar holding land exempt from the payment of Revenue, or any intermediate Lease-holder, or occupant of land, between the Sudder Malgoozar or Lakherajdar, and the Ryots on cultivations of the soil, has neglected to adjust the rents of the Ryots, as required by the Regulations in force, and to grant Pottahs as therein directed, he shall report the same for the information of the Board of Revenue, to which such Collector may be subordinate, and if the Board, by whom such report may be received, after directing any enquiry, which they may deem necessary, and adopting any preliminary measure which they may judge proper, such as requiring the Land-holder or other person, who may have neglected to observe the Regulations concerning Rents and Pottahs, to explain the same, or to supply the omission within a given period, shall deem it requisite for the due enforcement of the Regulations, and for the ends of justice, that the Collector of the district or any other Public Officer, should be deputed to the village or villages, in which

Digitized by Google

the stated omission and neglect may have occurred, for the purpose of making a measurement, and Mofussil Jummabundy, and granting Pottahs to the Ryots, as prescribed by the Regulations, they shall communicate their sentiments to Government, and, at the same time, transmit a copy of the Report received from the Collector. The Governor General in Council will then determine upon the expediency of the measure proposed, and if he deem it proper, shall be competent to sanction it and to vest the Collector or other Officer commissioned to make a measurement and Mofussil Jummabundy, and to grant Pottahs to the Ryots, with the same powers as are vested in Collectors, making or revising settlements in the Western Provinces, under the provisions of Section 9, Regulation VII. 1822, or any other Section in that Regulation.

(Signed) J. H. HARINGTON.

Digitized by Google